

Amendment No. 1 to SB3800

Cooper
Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 3800*

House Bill No. 3807

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 45, is amended by adding the following Sections 2 through 5 as a new, appropriately designated chapter thereto.

SECTION 2.

(a) Any lender found by a preponderance of the evidence to have violated the Tennessee Home Loan Protection Act, found in title 47, shall be liable to the borrower for the following:

(1) Actual damages;

(2) If the violation is due to gross negligence, statutory damages equal to the finance charge paid under the loan and forfeiture of the remaining interest under the loan for a violation of this act; and

(3) Costs and reasonable attorney's fees.

(b) Punitive damages may be awarded where the court finds that the violation is willful.

(c) The loan may be reformed to effect with remedies provided in this section.

(d) The remedies provided in this section are not exclusive and are in addition to any other remedies available to a borrower under applicable law.

(e) Any action under this section shall be brought within three (3) years from the date of the occurrence of the violation. This subsection does not bar a borrower from asserting a violation of this chapter as a defense in an action to collect the debt which was brought more than three (3) years from the date of occurrence of the violation as a matter of defense by recoupment or set-off in such action.

(g) In any action under this section, upon finding that the action is frivolous or brought for the purpose of harassment, the court may require the borrower instituting the

action to indemnify the defendant for any damages incurred, including reasonable attorney's fees and costs.

(h) In any action under this section, notice of the action by copy shall be filed simultaneously with the department of financial institutions.

SECTION 3. A lender is not liable to a borrower for a violation of the Tennessee Home Loan Protection Act if the violation is not due to an intentional act and within sixty (60) days of the discovery of the violation by the lender, purchaser, servicer, or any other party, provided it is prior to any action to foreclose, appropriate restitution is made to the borrower, and appropriate adjustments are made to the loan.

SECTION 4.

(a) The commissioner is granted the power to enact, in accordance with the Uniform Administrative Procedures Act, reasonable substantive and procedural rules as are necessary and proper for the administration, enforcement and interpretation of the provisions of the Tennessee Home Loan Protection Act,

(b) The commissioner may conduct examinations and investigations and issue subpoenas and orders to enforce the provisions under title 45 with respect to a person subject to the regulatory jurisdiction of the commissioner. For purposes of defraying the investigation and examination expenses incurred by the commissioner in the enforcement of the Tennessee Home Loan Protection Act, the commissioner shall recover the actual costs for such investigation and examination from the person.

(c) The commissioner may bring an action in the chancery court of Davidson County to enjoin any act or practice in or from this state which constitutes a violation of the Tennessee Home Loan Protection Act, or any administrative rule issued pursuant thereto. The court may not require the commissioner to post a bond in bringing such an action. Upon a proper showing by the commissioner, the court shall grant a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief including the recovery by the commissioner of costs and attorney fees.

(d) The provisions of this section shall not limit the authority of the attorney general and reporter from instituting or maintaining any action, including a class action, within the scope of its authority with respect to practices prohibited by the Tennessee Home Loan Protection Act.

SECTION 5. All counties, municipalities, or political subdivisions of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial and lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending practices, interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the department of financial institutions, including activities subject to this chapter;

(2) Are subject to the jurisdiction of the office of thrift supervision, the office of the comptroller of the currency, the national credit union administration, the federal deposit insurance corporation, the federal trade commission, or the United States department of housing and urban development;

(3) Originate, purchase, sell, buy, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivisions (1) or (2) to assist or facilitate such transactions; or

(4) Are chartered by the United States congress to engage in secondary market mortgage transactions.

SECTION 6. Tennessee Code Annotated, Section 35-5-101, is amended by adding the following language as a new subsection thereto:

(e) In any sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders of process, the trustee that sells property shall send to the debtor and any co-debtor a copy of the notice required in §35-5-104. The notice shall be sent on or before the first date of

publication provided in this section by registered or certified mail, return receipt requested. The notice shall be sent to the following:

(1) If the debtor:

(A) The location of the property; and

(B) The last known residence of the debtor or such other address provided by the debtor to the mortgagor or trustee, at least thirty (30) days prior to the publication date, if such residence or other last known address is different from the address of the property.

(2) If a co-debtor, the last known residence address or other address of the co-debtor which is provided to the mortgagor or trustee at least thirty (30) days prior to the publication date, but only if such residence or such other address is both different from the address of the property and different from that of the debtor.

SECTION 7. If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision of or application, and to that end the provisions if this act are declared to be severable.

SECTION 8. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2007.